
Article

The Secret History of the *Bluebook*

Fred R. Shapiro & Julie Graves Krishnaswami[†]

*We tend to think of everything that exists now as always having existed. We like all of the comfortable things to which we are now accustomed, and hate to give up anything which has worked well in earlier days under simpler conditions.*¹

Erwin N. Griswold

THE ORIGINS OF THE *BLUEBOOK*: FOLKLORE²

It was April 11, 1987. At the Copley Plaza Hotel in Boston, over corn chowder, breast of chicken Veronique, broccoli Polonaise, pommes Lyonnaises, and chocolate mousse cake, the *Harvard Law Review*, the most prestigious institution of the American legal Establishment, was holding its centennial ban-

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1. Erwin N. Griswold, *The Supreme Court's Case Load: Civil Rights and Other Problems*, 1973 U. ILL. L.F. 615, 615.

2. Due to the archival nature of many of the sources contained in this Article, the *Minnesota Law Review* was not able to obtain certain pieces. The following footnotes contain references that were verified by the authors but not by the *Minnesota Law Review* editors: footnotes 3, 13, 14, 53, 55, 57, 63, 69, 77, 84, 85, 91, 92, and 103.

quet. On the dais, according to the program, were such luminaries as William J. Brennan, Jr., William T. Coleman, Susan R. Estrich, Joseph H. Flom, Paul A. Freund, and Elliot L. Richardson. Heading a panel discussion was Erwin N. Griswold, President of the *Law Review* in 1927–28 and subsequently Dean of the Harvard Law School from 1946 to 1967 and Solicitor General of the United States from 1967 to 1973.³

Erwin Griswold's accomplishments were manifold. Griswold (1904–1994) joined the faculty of Harvard Law School in 1934.⁴ He taught the nation's first course in federal taxation,⁵ and published a landmark law review article that inspired the creation of a *Federal Register* to systematize and make accessible the government's regulations.⁶ As Dean, Griswold greatly expanded the Law School's curriculum, faculty, physical plant, financial resources, and international scope.⁷ He admitted women for the first time and substantially increased the number of African-American students.⁸

Outside of Harvard's walls, Griswold championed the privilege against self-incrimination during the era of McCarthyism. He fought many battles against racial discrimination and served on the United States Commission on Civil Rights.⁹ Lyndon Johnson appointed him Solicitor General, a post he continued to occupy in the Nixon Administration.¹⁰ In his most famous Supreme Court argument, Griswold spoke for the government in the "Pentagon Papers Case"¹¹ involving prior restraint of press publication claimed to be a danger to national security (he later expressed some regret about that position).¹²

In the centennial album book published in conjunction with the banquet in 1987, Dean Griswold contributed the only substantive piece, a twenty-page article entitled *The Harvard*

3. HARVARD LAW REVIEW: CENTENNIAL ALBUM [unpaginated front matter] (1987).

4. Roger K. Newman, *Griswold, Erwin N.*, in THE YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW 239 (Roger K. Newman ed., 2009).

5. *Id.*

6. Erwin N. Griswold, *Government in Ignorance of the Law—A Plea for Better Publication of Executive Legislation*, 48 HARV. L. REV. 198 (1934) (discussing the importance of providing a reasonable means of distributing and preserving the texts of executive-made law).

7. Newman, *supra* note 4.

8. *Id.*

9. *Id.*

10. *Id.*

11. *N.Y. Times Co. v. United States*, 403 U.S. 713 (1971).

12. Newman, *supra* note 4, at 239–40.

*Law Review—Glimpses of Its History as Seen by an Aficionado.*¹³ In this definitive history of the *Law Review*, Griswold wrote the following:

Another activity for which the Review has major responsibility is the form book, or “Bluebook,” formally known as *A Uniform System of Citation*. This publication goes back at least to the 1920s, when an “Instructions for Editorial Work” was prepared by student editors and put in the hands of the new members of the *Review*. In due course, this booklet developed and was revised; other law reviews heard about it, and made suggestions for its improvement. This led to a meeting of the Presidents of the *Harvard*, *Columbia*, and *University of Pennsylvania Law Reviews*, and the *Yale Law Journal*. As a result of this meeting, the four journals now publish the Bluebook jointly and share the revenues; but virtually all the editorial work is still done at Harvard, which earns the largest share of the income. The Bluebook has become a major publication, widely used in law offices throughout the country, as well as by law reviews and other legal publications.¹⁴

Griswold’s comments here have become the canonical account of the origins of the *Bluebook* (*A Uniform System of Citation*) legal citation manual.¹⁵ His statement is referenced, directly or indirectly, on the *Harvard Law Review* website¹⁶ and the *Yale Law Journal* website,¹⁷ in the Wikipedia entry “Bluebook,”¹⁸ and in many scholarly articles.¹⁹ His statement is also

13. HARVARD LAW REVIEW: CENTENNIAL ALBUM, *supra* note 3, at 1.

14. *Id.* at 12.

15. A UNIFORM SYSTEM OF CITATION: ABBREVIATIONS AND FORM OF CITATION (1st ed. 1926). Throughout this Article, the terms “Bluebook” and “Uniform System of Citation” are used interchangeably, although the latter, original title was not officially changed to the former until the 15th edition in 1991. The earliest occurrence we have found of the name “Bluebook” or “Blue Book” for the citation manual was in 1949. HARV. L. SCH. REC., Oct. 5, 1949, at 3 (advertisement for 8th edition of *A Uniform System of Citation*).

16. Erwin N. Griswold, *The Harvard Law Review—Glimpses of Its History as Seen by an Aficionado*, HARV. L. REV. (Jan. 17, 1987), <http://harvardlawreview.org/1987/01/glimpses-of-its-history-as-seen-by-anaficionado>.

17. YALE LAW JOURNAL, <http://yalelawjournal.org/about-the-yale-law-journal> (last visited Mar. 7, 2016).

18. *Bluebook*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Bluebook> (last visited Mar. 7, 2016).

19. See, e.g., Carol M. Bast & Susan Harrell, *Has the Bluebook Met Its Match? The ALWD Citation Manual*, 92 L. LIBR. J. 337 (2000); Jim C. Chen, *Something Old, Something New, Something Borrowed, Something Blue*, 58 U. CHI. L. REV. 1527 (1991); A. Darby Dickerson, *An Un-Uniform System of Citation: Surviving with the New Bluebook (Including Compendia of State and Federal Court Rules Concerning Citation Form)*, 26 STETSON L. REV. 53 (1996); Dylan O. Drummond, *Texas Citation Writ Large(r): Consequential Necessity or “Tyranny of the Inconsequential”?*, 26 APP. ADVOC. 24 (2013); Gil

wildly erroneous. Almost none of the assertions about the *Bluebook's* early history correspond to the demonstrable facts. The divergences from the true story are dramatic and puzzling.

Comments by Erwin Griswold have also inspired a second folktale about the origins of the *Bluebook*. This tale asserts that Griswold himself was the *Bluebook's* compiler. The source appears to be a 1992 book review of the manual's fifteenth edition. The book review author, James W. Paulsen, wrote: "*The Bluebook* was born in Cleveland, Ohio, in the summer of 1926, the child of second-year law student Erwin Griswold and the *Harvard Law Review*. . . . Dean Griswold reports that he had a Cleveland print shop provide an expanded version of an eight page mimeographed supplement during his summer break."²⁰ Paulsen's account or descendants of that account, deriving straight from "the horse's (Griswold's) mouth," have been cited by many commentators for the proposition that Griswold was the adapter or outright author of the first edition of the *Uniform System of Citation*.²¹ It will be seen in the present Article that folktale number two, like folktale number one, does not fit with the factual record.

Over the near-century of its existence, the *Bluebook* has assumed an importance in legal culture far beyond the roles of

Grantmore, *The Death of Contra*, 52 STAN. L. REV. 889 (2000); Christine Hurt, *Network Effects and Legal Citation: How Antitrust Theory Predicts Who Will Build a Better Bluebook Mousetrap in the Age of Electronic Mice*, 87 IOWA L. REV. 1257 (2002); Pamela Lysaght & Grace Tonner, *Bye Bye Bluebook?*, 79 MICH. B.J. 1058 (2000); James W. Paulsen, *An Uninformed System of Citation*, 105 HARV. L. REV. 1780 (1992) (book review); Eric Shimamoto, Comment, *To Take Arms Against a See of Trouble: Legal Citation and the Reassertion of Hierarchy*, 73 UMKC L. REV. 443 (2004).

20. Paulsen, *supra* note 19, at 1782 & n.14 (citing Interview with Erwin N. Griswold, Harvard Law Review Annual Banquet (Apr. 4, 1992)).

21. See, e.g., Bast & Harrell, *supra* note 19, at 339; Charles Bazerman, *How Does Science Come To Speak in the Courts?: Citations, Intertexts, Expert Witnesses, Consequential Facts, and Reasoning*, 72 L. & CONTEMP. PROBS. 91, 97 n.17 (2009); Dickerson, *supra* note 19, at 57–58; Drummond, *supra* note 19, at 28 n.17; Ian Gallacher, *Cite Unseen: How Neutral Citation and America's Law Schools Can Cure Our Strange Devotion to Bibliographical Orthodoxy and the Constriction of Open and Equal Access to the Law*, 70 ALB. L. REV. 491, 505 n.72 (2007); Hurt, *supra* note 19, at 1265; Christine Hurt, *The Bluebook at Eighteen: Reflecting and Ratifying Current Trends in Legal Scholarship*, 82 IND. L.J. 49, 51 (2007); Lysaght & Tonner, *supra* note 19, at 1058; Nancy A. Wanderer, *Citation Excitement: Two Recent Manuals Burst on the Scene*, 20 ME. B.J. 42, 43 (2005); Melissa H. Weresh, *The ALWD Citation Manual: A Coup de Grace*, 23 U. ARK. LITTLE ROCK L. REV. 775, 776–77 (2001); Melissa H. Weresh, *The ALWD Citation Manual: A Truly Uniform System of Citation*, 6 LEGAL WRITING 257, 258 (2000); Shimamoto, *supra* note 19, 445–46.

its counterparts in other disciplines, such as *The Chicago Manual of Style*,²² the *MLA Style Manual*,²³ and the *Publication Manual of the American Psychological Association*.²⁴ Nearly all first-year law students are provided with a *Bluebook* and required to learn the rules for citing cases, statutes, regulations, articles, books, etc. Judge Richard A. Posner, President of the *Harvard Law Review* in 1961–62 and now the foremost *Bluebook* critic, has characterized the profound impact on legal education:

Form is prescribed for the sake of form, not of function; a large structure is built up, all unconsciously, by accretion; the superficial dominates the substantive. The vacuity and tendentiousness of so much legal reasoning are concealed by the awesome scrupulousness with which a set of intricate rules governing the form of citations is observed.²⁵

He has worried that the time required for law students to learn and employ the overly complex and inconsistent *Bluebook* rules would be better spent engaging in more lawyerly activities, especially “thinking about what they are writing.”²⁶

Posner also has zeroed in on the *Bluebook*’s effect on legal prose:

The particular casualty of preoccupation of citation forms is the style of legal writing. . . . By teaching that uniformity is one of the most important things in law, the *Bluebook* encourages the tendency of young lawyers . . . to cultivate a most dismal sameness of style, a lowest-common-denominator style. The *Bluebook* creates an atmosphere of formality and redundancy in which the drab, Latinate, plethoric, euphemistic style of law reviews and judicial opinions flourishes. Every lesson that students of the English language and teachers of writing seek to instill and that the great writers exemplify is turned on its head in legal writing.²⁷

Beyond Posner’s points, another impact of the *Bluebook* on the discourse of law is that legal writers are sometimes discouraged from originality because the *Bluebook* is interpreted to require that all assertions must be backed up by citations to authority.

22. THE CHICAGO MANUAL OF STYLE (Univ. of Chi. Press ed., 16th ed. 2010).

23. MLA STYLE MANUAL AND GUIDE TO SCHOLARLY PUBLISHING (3d ed. 2008).

24. PUBLICATION MANUAL OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION (Gary R. VandenBos et al. eds., 6th ed. 2010).

25. Richard A. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343, 1344 (1986).

26. *Id.* at 1348.

27. *Id.* at 1349.

As a result of the *Bluebook* tendencies just described, arcane rules and abbreviations act as shibboleths. Only the initiated are able to comprehend the mumbo-jumbo of citations in legal arguments. This is one more of the many factors alienating lay people from the legal system as a whole.²⁸

It is ironic that a style manual that sets forth overwhelming detail about the format of accurate citations to authority, and that fosters a climate in which every assertion in legal writing must be supported by such citations, should have its own origins and history thoroughly mired in inaccuracy. Our purpose in this Article is to replace that irony with documented evidence.

The most powerful forms of documentation are primary sources found through archival research. In the age of the Internet, when so much data is available on our desktops or tablets or smartphones, we may forget that historical theories based on secondary writings, online searches, even the memories of participants, can be disproven by studying original texts preserved in library archives. The chronicle below is firmly grounded in a particularly amazing chain of discoveries made in the archives of Harvard and Yale, often utilizing artifacts that are unique, and leads to striking conclusions unimagined by previous scholars who did not have the benefits of such research.

28. Other areas that are heavily influenced by the *Bluebook* include the work of law reviews and the marketplace of legal publishing. The impact of the *Bluebook* is, of course, not all negative. The citation practices it adheres to enable researchers to locate cited sources, help readers to evaluate the authority of an argument, and conserve space on the page, as well as underscoring the importance in legal analysis of precedent and attention to detail. Even Richard Posner acknowledges the *Bluebook's* value as a treatise on legal bibliography.

In view of the *Bluebook's* outsized prominence in the legal world, it is not surprising that there have been multiple attempts to popularize alternative citation formats and guides. Further attesting to its stranglehold on legal culture, the *Bluebook* has been able to defeat its several challengers handily. The competitors have included ALWD CITATION MANUAL: A PROFESSIONAL SYSTEM OF CITATION (Ass'n of Legal Writing Dirs. & Darby Dickerson eds., 2000); AM. ASS'N OF LAW LIBRARIES, UNIVERSAL CITATION GUIDE (Comm. on Citation Formats ed., 1999); MILES PRICE, A PRACTICAL MANUAL OF STANDARD LEGAL CITATIONS: RULES, RATIONALE AND EXAMPLES OF CITATIONS TO AUTHORITY FOR LAWYERS, LAW STUDENTS, TEACHERS AND RESEARCH WORKERS (1950); UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION (Univ. of Chi. Law Review & Univ. of Chi. Legal Forum eds., 1989) (also known as the "Maroon Book"). None of these have made a lasting dent in the *Bluebook's* primacy.

THE ORIGINS OF THE *BLUEBOOK*: HISTORY

The true history of the *Bluebook* began in 1920, at Yale rather than Harvard, with a person who was even more important in the history of legal scholarship than Erwin Griswold. Karl N. Llewellyn had graduated from Yale College in 1915 (after interrupting his education to enlist in the German Army in World War I and win the Iron Cross) and from Yale Law School in 1918.²⁹ In law school he had served as Editor-in-Chief of the *Yale Law Journal*, and, after his graduation, wartime conditions had resulted in his being asked to stay on in that role for another year as well as being an instructor.³⁰

In addition to the usual editorial duties, Llewellyn produced something else of note in his extra year overseeing the *Law Journal*. The first item in the first volume of his bound offprint articles in the Yale Law Library Faculty Collection is an eight-page booklet entitled *The Writing of a Case Note*, with an imprint on the cover of “Yale Law Journal / 1920.”³¹ The cover lists as author “Karl Nickerson Llewellyn / Editor-in-Chief / 1918–1919.”³² Inside there is a title page that repeats “The Writing of a Case Note by Karl Nickerson Llewellyn,” but adds an additional title in smaller type, “Rules for the Writing of Cases by William Murray Field / Case and Comment Editor / 1919–1920.”³³ The imprint on the title page is “Prepared / For The Use Of / The Editorial Board of the / Yale Law Journal / 1920.”³⁴

29. WILLIAM TWINING, *KARL LLEWELLYN AND THE REALIST MOVEMENT* 91–99 (Robert Stevens et al. eds., 1973).

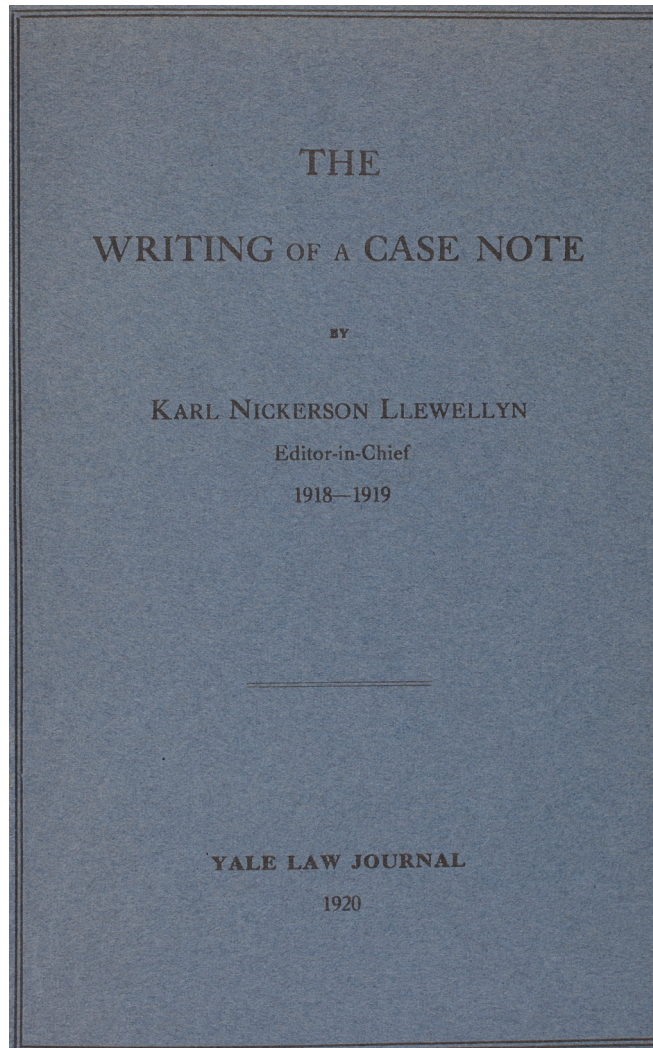
30. *Id.*

31. There appears to be only one other copy in any library, in the Karl Llewellyn Papers at the University of Chicago Library. According to the online *Guide to the Karl N. Llewellyn Papers 1890–1983*, UNIV. OF CHI. LIBR., <http://lib.uchicago.edu/e/src/findingaids/view.php?eadid=ICU.SPCL.LLEWELLYNK> (last visited Mar. 7, 2016), *The Writing of a Case Note* was Llewellyn’s earliest publication.

32. KARL N. LLEWELLYN, *THE WRITING OF A CASE NOTE* (1920).

33. *Id.*

34. *Id.*



The Writing of a Case Note begins with a short discussion of the methodology of preparing to write a case note.³⁵ Then there is a section headed “Content of a Case-Note,” briefly treating “heading,” “digest,” “write-up,” “general,” “headnote,” “the digest,” and “analysis.”³⁶ The last point, in its entirety, consists of the following:

35. *Id.* at 3-5.

36. *Id.* at 5-8.

ANALYSIS: Trace the development of the particular point of law under discussion, bringing forth all sides of the question. Show the position taken by the principal case and conclude with your idea of the decision and possibly, a prediction as to whether or not it will be followed. Never state this dogmatically, but as a suggestion, thus: It would seem . . . etc. It is submitted . . . etc. Always cite authorities after the end of a sentence, *never in the middle*. Do not make your analysis merely a summary of holdings. Use quotations only when absolutely necessary.

If a case is in point, cite it directly, thus: *Jones v. Smith* (1911) 92 Conn. 34, 3 Atl. 56.

If there is a dictum in the case, refer to it thus (indicating the page upon which the dictum appears): See *Jones v. Smith* (1911) 92 Conn. 34, 37, 3 Atl. 56, 58.

If the case squints toward your point, refer to it thus: Cf. *Jones v. Smith*, etc.

Always place a period after the versus sign (v.) since this is an abbreviation.

Always have the name of the case in italics (effected by one underlining).

Always put the date of the case in parentheses immediately following the name, thus: —*Jones v. Smith* (1911). No punctuation is placed between.

If the name of the reporter cited does not contain the name of the jurisdiction or covers several courts put the initials of the jurisdiction or court in the parentheses, following the date, separated by a comma (unless the highest court of the state) thus:—(1832, Mass.) 1 Cush. 91, (1911, Ct. App.) 192 Ala. 45, (1910, C.C.A. 2d) 202 Fed. 60, (1909, S.D.N.Y.) 200 Fed. 360.

Always place a period at the end of an abbreviation of name of a reporter, thus:—16 Ala. 92, 16 Fed. 88, 7 U.S. 69, 8 Sup. Ct. 90.

Always cite the national reporter in addition to and following the state, federal or supreme court reporter, separating the two by a comma, thus:—90 Mass.71,80 N.E.67.

Where more than one case is cited on the same point, separate by a semi-colon, thus:—*Brown v. Black* (1909) 140 Wis. 388, 122 N. W. 1038; *Green v. Grey* (1915) 166 App. Div. 68, 151 N.Y. Supp. 613.

Cite the Yale Law Journal thus: if a leading article,—Haines, *Efforts to Define Unfair Competition* (1919) 29 YALE LAW JOURNAL, 1; if a comment,—COMMENT (1919) 29 YALE LAW JOURNAL, 97; if a case note or current decision,—(1919) 28 YALE LAW JOURNAL, 709.

Cite text books thus: Wharton, *Conflict of Laws* (3d ed. 1905) 604. If a section, put in “sec.” If a paragraph, put in “par.”³⁷

37. *Id.* at 7–8.

RULES FOR THE WRITING OF CASES

Hand in legible work—typed if possible.

A case consists of two paragraphs, a head note and an analysis.

Write in a clear, direct and compact form.

HEADNOTE—A headnote consists of the *heading* and the *digest*. The *heading* is always in small capitals (effected by two lines under the words) thus: INTERNATIONAL LAW, CITIZENSHIP, EXPATRIATION. It consists of an index of the discussion in the case note, stated in one or several groups of words separated by dashes. A period is always at the end of the final group, and a dash is put before the first word of the digest.

THE DIGEST—State the *facts* clearly and briefly in one or more complete sentences ending with a period. Use the past tense throughout the headnote. State the *holding* concisely, introducing it thus: *Held* that . . . etc. It must show clearly what was decided by the court. If a dissent show it thus: *Held*, (two Judges *dissenting*) that etc.; or thus: Jones, J. *dissenting*.

ANALYSIS: Trace the development of the particular point of law under discussion, bringing forth all sides of the question. Show the position taken by the principal case and conclude with your idea of the decision and possibly, a prediction as to whether or not it will be followed. Never state this dogmatically, but as a suggestion, thus: It would seem . . . etc. It is submitted . . . etc. Always cite authorities after the end of a sentence, *never in the middle*. Do not make your analysis merely a summary of holdings. Use quotations only when absolutely necessary.

If a case is in point, cite it directly, thus: *Jones v. Smith* (1911) 92 Conn. 34, 3 Atl. 56.

If there is a dictum in the case, refer to it thus (indicating the page upon which the dictum appears): See *Jones v. Smith* (1911) 92 Conn. 34, 37, 3 Atl. 56, 58.

If the case squints toward your point, refer to it thus: Cf. *Jones v. Smith*, etc.

Always place a period after the versus sign (v.) since this is an abbreviation.

Always have the name of the case in italics (effected by one underlining).

Always put the date of the case in parentheses immediately following the name, thus:—*Jones v. Smith* (1911). No punctuation is placed between.

If the name of the reporter cited does not contain the name of the jurisdiction or covers several courts put the initials of the jurisdiction or court in the parentheses, following the date, separated by a comma (unless the highest court of the state) thus:—(1832, Mass.) 1 Cush. 91, (1911, Ct. App.) 192 Ala. 45, (1910, C.C.A. 2d) 202 Fed. 60, (1909, S.D.N.Y.) 200 Fed. 360.

Always place a period at the end of an abbreviation of name of a reporter, thus:—16 Ala. 92, 16 Fed. 88, 7 U.S. 69, 8 Sup. Ct. 90.

Always cite the national reporter in addition to and following the state, federal or supreme court reporter, separating the two by a comma, thus:—90 Mass.71,80 N.E.67.

Where more than one case is cited on the same point, separate by a semi-colon, thus:—*Brown v. Black* (1909) 140 Wis. 388, 122 N. W. 1038; *Green v. Grey* (1915) 166 App. Div. 68, 151 N.Y. Supp. 613.

Cite the Yale Law Journal thus: if a leading article,—Haines, *Efforts to Define Unfair Competition* (1919) 29 YALE LAW JOURNAL, 1; if a comment,—COMMENT (1919) 29 YALE LAW JOURNAL, 97; if a case note or current decision,—(1919) 28 YALE LAW JOURNAL, 709.

Cite text books thus: Wharton, *Conflict of Laws* (3d ed. 1905) 604. If a section, put in "sec." If a paragraph, put in "par."

This list of citation rules is astonishingly short and simple by today's standards: it takes up approximately one page in the 1920 booklet. We will show that it is the embryo that has

grown into the 582-page behemoth that is the *Bluebook* 20th edition in 2015.

It is arguable that the authorship of the proto-*Bluebook* set forth above should be credited to William Murray Field, since the citation rules appear to fall within the “Rules for the Writing of Cases” portion of the booklet.³⁸ Field was an Alabamian (born in 1897) who received an LL.B. cum laude from Yale in 1920.³⁹ The *Yale Law School Alumni Directory* of 1949 listed him, immediately before Claude Fields, Jr., son of the great comedian W. C. Fields, and noted that he was “engaged in hosiery mfg. since 1920.”⁴⁰ Field became President of Jackson Hosiery Mills and secretary of Barnhardt Bros. Corp., both companies located in North Carolina, and was author of “numerous articles in textiles trade publications.”⁴¹ He died in 1983.⁴²

Although Field clearly is entitled to be regarded as coauthor of the citation mini-manual of 1920, it appears probable to us that Llewellyn, as Editor-in-Chief the year before and the first-listed author of the overall booklet, commissioned the citation portion and gave direction to Field in his formulation of rules. Long before Karl Llewellyn drafted the Uniform Commercial Code, he initiated the drafting of the precursor of a code for legal citations.

Paul Gewirtz has written:

Only a few American legal scholars have been unquestionably great. Karl Llewellyn, who died in 1962, is surely one of these. Enormously creative and influential in such diverse fields as contracts, commercial law, jurisprudence, and anthropology, Llewellyn was perhaps the most important of the “legal realists.” He was a person of almost heroic intellectual ambition, yet was also actively involved with the practical affairs of the legal profession. His biographer has aptly called him “the most romantic of legal realists, the most down-to-earth of legal theorists.”⁴³

38. It is not clear cut what the demarcation is between the “The Writing of a Case Note” and “Rules for the Writing of Cases” sections, nor even whether there are two distinct sections. However, a running head on page seven suggests that “Rules for the Writing of Cases” is the latter part of the booklet, and the citation rules are at the very end of the booklet.

39. YALE LAW SCH. ASS’N, YALE LAW SCHOOL ALUMNI DIRECTORY CONTAINING BIOGRAPHIES OF LIVING ALUMNI 153–54 (1949).

40. *Id.*

41. *Id.*

42. *William Murray Field*, FAMILY SEARCH, <https://familysearch.org/ark:/61903/1:1:FG49-B49> (last visited Mar. 7, 2016).

43. Paul Gewirtz, *Introduction to Karl N. Llewellyn, The Case Law System in America*, 88 COLUM. L. REV. 989, 989 (1988).

The citation rules of 1920 presumably represented, not the heroic side of Llewellyn, but rather his practical, down-to-earth side. Even this small practical product of his intellect, however, was to lead to an important legacy in American law.

Professor Gewirtz has suggested to us that the legacy of the *Bluebook* at first glance appears contradictory to Llewellyn's commercial law achievements:

Llewellyn's codification efforts—in, for example, the UCC—by design included flexible concepts such as “reasonableness” at key points. This was designed to give decision-makers flexibility, such as the room to make the sort of fact-specific conclusions that no rule can (or should) provide for in advance. . . . What about the codification of legal citation forms? Most people think of the *Bluebook* as designed to create rigid rules to assure uniformity and to assure that the meaning of a citation is clear. That would be undermined if citation rules allowed for “reasonable” adjustments. . . . I would be surprised if Llewellyn's *Bluebook* codification of legal citation forms provided for the same flexibility of application as his codification of law.⁴⁴

However, Gewirtz continued,

[T]here's another possible way to link a Llewellyn *Bluebook* to the rest of his work. Above all, Llewellyn was committed to “case law.” The book of his I edited is called *The Case Law System in America*. *The Bramble Bush* is largely about case law. And *The Common Law Tradition* is wholly about case law. In all these writings, Llewellyn tried to demonstrate the meaning and uses of a case—what a specific case meant and didn't mean as a precedent, and how best to understand the evolution of case law through the common law system and tradition. . . . Since Llewellyn's terrain was the attentive and meticulous deployment of case law, not the disregard of case law, it is very understandable to me that Llewellyn would greatly want a reliable system of legal citation—most importantly a reliable system of citing case law.⁴⁵

In fact, the small citation guide provided in the Llewellyn-Field booklet did focus almost entirely on the citation of cases rather than citation of other genres of legal sources.

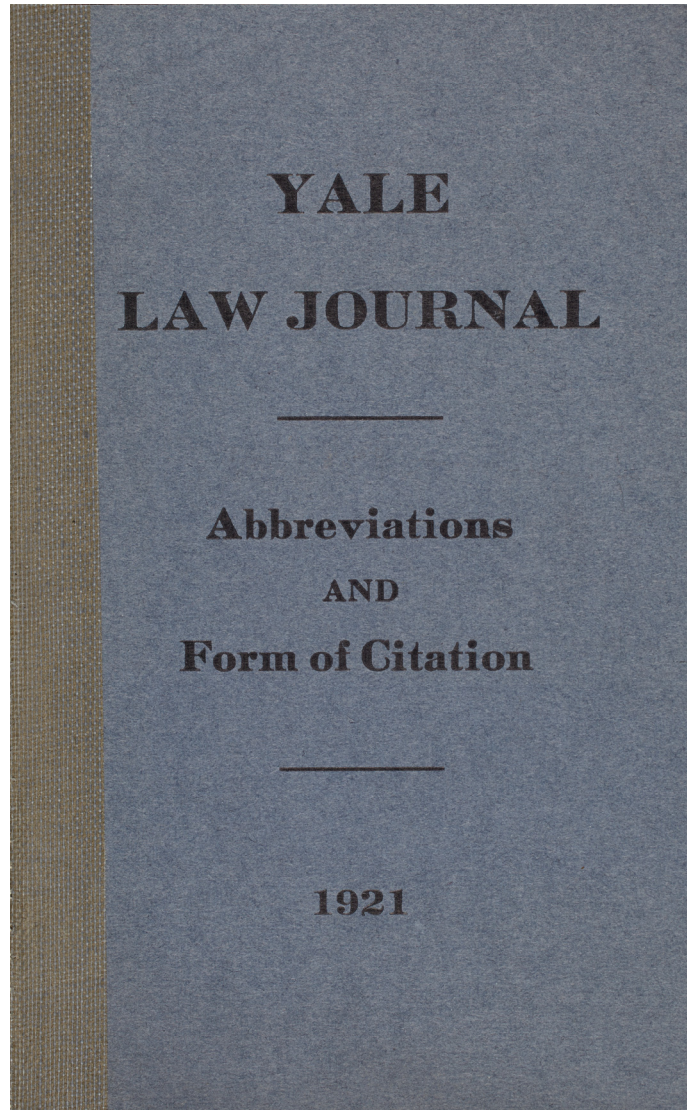
The Llewellyn-Field booklet had a blue cover, appropriate for its University.⁴⁶ The second step in the evolution of the *Bluebook* occurred the next year, in 1921, when the *Yale Law Journal* printed a tiny (fifteen pages, approximately 3-1/2” x 5-1/2”) blue pamphlet titled *Abbreviations and Form of Citation*.

44. E-mail from Paul Gewirtz, Professor, Yale Law Sch., to Fred R. Shapiro, Assoc. Librarian for Collections & Access and Lecturer in Legal Research, Yale Law Sch. (Aug. 11, 2015, 14:57 EST) (on file with authors).

45. *Id.*

46. Blue became the official color of Yale in 1894. *Kind of Blue*, YALE ALUMNI MAG. (July/Aug. 2010), <https://yalealumnimagazine.com/articles/2935/kind-of-blue>.

There is only one known surviving copy, in the Rare Book Collection of the Yale Law Library. It consists of seven pages covering “Form of Citation,” followed by a short list of printer’s signs for proofreading and a seven-page table of abbreviations.⁴⁷



47. YALE LAW JOURNAL, ABBREVIATIONS AND FORM OF CITATION (1921).

The descent of *Abbreviations and Form of Citation* from the Llewellyn-Field rules is clear. The same sample case, *Jones v. Smith* (1911) 92 Conn. 34, 3 Atl. 56, was used as an illustration in both documents.⁴⁸ The same sample *Yale Law Journal* article by Haines, *Efforts to Define Unfair Competition* (1919) 29 YALE LAW JOURNAL, 1, was also repeated,⁴⁹ as well as some other material. New rules were added concerning English reports and American and English statutes, as well as some general rules of punctuation, abbreviation, the use of ellipses, and the use of *supra*, *ibid.*, etc.⁵⁰ Yale's *Abbreviations and Form of Citation*, it will be shown below, was the immediate precursor of the *Bluebook*, a citation manual rather than a page of rules.

In 1922 the *Harvard Law Review* issued *Instructions for Editorial Work*, twenty-one pages of advice for editors including eight pages of rules on "abbreviations" and citation "form." This was the internal document mentioned by Erwin Griswold in 1987 and presumably it was also the "eight page mimeographed supplement" that Griswold in 1992 said had been expanded by him in Cleveland to create the 1926 first edition of the *Uniform System of Citation (Bluebook)*. The only known extant original copy is in Harvard Law Library's "Red Set," which attempts to preserve all publications of their law school.⁵¹

Meanwhile, back at Yale, things were not standing still in the citations realm. A second version of *Abbreviations and Form of Citation* was printed in 1924, differing from the 1921 version only in a few minor additions.⁵² The next development is described, not in any records at Yale (*Yale Law Journal* archives are minimal), but rather in the wonderfully informative and candid annual President's Reports of the Harvard Law Review Association, preserved at the Harvard University Archives as part of their twenty-one containers of Harvard Law Review

48. *Id.* at 1.

49. *Id.* at 4.

50. *Id.* at 3–8.

51. There is also a significant photocopy elsewhere in the Harvard Law Library collection. See *infra* note 92 and accompanying text.

52. The only known surviving copy of the 1924 pamphlet is in the Rare Book Collection of the Yale Law Library. Both the 1921 and 1924 pamphlets were reprinted, along with the first to fifteenth editions of the *Bluebook*, in THE BLUEBOOK: A SIXTY-FIVE YEAR RETROSPECTIVE (1998). As a result of this reprint, the existence of the two Yale *Bluebook* precursors has been known for almost two decades and been referred to in a number of articles. Fred Shapiro was the original discoverer of these two precursors, and they were included in *The Bluebook: A Sixty-Five Year Retrospective* after its publisher, William S. Hein & Co., was notified about them by Shapiro.

Association records, covering 1904–1966. The report for volume 38 of the *Harvard Law Review*, dated June 3, 1925, was authored by that volume's President, Robert G. Page, who became a founder of the New York firm of Debevoise & Plimpton and President and Chairman of the Phelps Dodge Corporation.

Under the heading "Mode of citation," Page wrote:

(1) A year ago the Yale Law Journal started a movement for a uniform mode of citation; the plan was aimed at lightening the editor's burden by inducing authors to follow a standard form. After a quiet year the agitation has been reopened. The new president has practically withdrawn from the proposed agreement. If the trustees feel that there is merit in the proposal, however, it is not too late for a graceful entrance on the part of the Review. (2) If the Review does not enter a uniform agreement, a new form book is in order. Omissions and ambiguities have turned up in the old. (3) Certain contributors, notably Mr. Charles Warren and Mr. Frankfurter, have insisted on overruling the Review's form book in so far as their articles were concerned. Uniformity is desirable. While a certain latitude will have to be allowed insistent authors, the president must offer as strong opposition as is consistent with tact. Mr. Frankfurter's idea is to follow the Supreme Court's mode of citation, that august body being regarded as correct in matters of form if not of substance. It is suggested that any new form book be drawn in collaboration with Mr. Frankfurter, that he may be estopped to complain on the many future occasions on which it is to be hoped he will write for the Review.⁵³

This passage is a fascinating one, revealing three major points: the "uniform citations" movement began at Yale; Harvard was initially very reluctant to join in; Harvard's overriding concern with regard to citations was to placate their powerful professor, Felix Frankfurter.⁵⁴

After the blockbuster 1924–25 President's Report, any Bluebookologist must look to the 1925–26 edition with great anticipation. The latter report, by David F. Cavers (subsequently a law professor at Duke and Harvard and an enormously important conflict-of-laws scholar), does not disappoint, featuring a section on "The Uniform Citation Plan" most of which is quoted below:

53. ROBERT G. PAGE, HARVARD LAW REVIEW ASS'N, PRESIDENT'S REPORT 6–7 (June 3, 1925) (Records of the Harvard Law Review Ass'n, Harvard Univ. Archives, HUD 3511.6772).

54. Frankfurter's idiosyncratic citation preferences continued to be a thorn in the side of the *Harvard Law Review* even long after he ascended to the United States Supreme Court. In his article, *John Marshall and the Judicial Function*, 69 HARV. L. REV. 217 (1955), he insisted on placing citations in the text rather than in footnotes and cited Supreme Court opinions by the name of the reporter rather than in the *Bluebook* form.

For several years the editors of the Yale and Columbia Reviews have sought to enlist the cooperation of the Harvard Law Review in establishing the uniform plan of citation for use among Law Reviews. The chief reason advanced for this plan was that once uniformity had been achieved, it would not be unreasonable to expect contributors to follow the plan adopted. The plan was opposed here in part because of skepticism as to the results to be attained and in part because of a desire not to deviate from our forms especially at the solicitation of other Reviews. Last spring the President was approached by Mr. Fiske, the Editor-in-Chief of the Yale Law Journal, who stated that he and Mr. Schwartz of the Columbia Law Review had worked out a tentative citation plan and had been assured by the Michigan, Pennsylvania and Illinois Reviews that they would join in any citation plan upon which Harvard, Yale and Columbia agreed. It seemed to the President that even though the plan might not bear the fruits expected of it, a continued policy of isolation would be inadvisable unless a marked deviation from the Harvard forms were called for. Accordingly he met with Mr. Fiske and found that the plan as drafted by him and Mr. Schwartz did not call for many deviations from our present form, and some of these seemed distinctly desirable. Moreover Mr. Fiske proved very amenable to suggestion and a number of revisions were made bringing the plan more nearly in accord with our present forms. The draft as thus amended was submitted for consideration and suggestions to about eight of the leading Reviews. It met with general approval. The plan was submitted to the reporters of the American Law Institute in the hope that that body would also follow the forms in whole or in part. While no definite action was taken by the Institute, it seems likely that it will follow the plan substantially in its restatements. The President attended a conference with Messrs. Fiske and Schwartz at New Haven where a final revision of the plan was undertaken and some of the suggestions made by other Reviews adopted. Form books containing the plan are now being printed and it is hoped to put it into operation next fall. The President does not know how many Reviews have definitely decided to follow the plan, but he believes that its acceptance will be general.

... While some of the forms adopted do not meet with the entire approval of the President, he believes that none are so objectionable as not to be justified by the gains likely to be obtained from their use.⁵⁵

Cavers's report above supplies information about the year leading up to the printing of the *Uniform System of Citation* first edition in 1926. It indicates that the citation "movement" had been in the works for several years and that, not only *Yale Law Journal*, but also *Columbia Law Review* had been an active participant. *Harvard Law Review* is said to have opposed the movement, with a strong suggestion of resentment by *Har-*

55. DAVID F. CAVERS, HARVARD LAW REVIEW ASS'N, PRESIDENT'S REPORT 10-12 (June 6, 1926) (Records of the Harvard Law Review Ass'n, Harvard Univ. Archives, HUD 3511.6772).

vard Law Review of uniformity imposed by “other Reviews,” then reversed course. A meeting in spring 1926 between Cavers and *Yale Law Journal* Editor-in-Chief Robert B. Fiske (later a vice president of the American Cyanamid Company and an assistant secretary general of NATO) is described, followed by another meeting also including *Columbia Law Review* Editor-in-Chief Arthur H. Schwartz (afterwards a federal prosecutor best known for obtaining the conviction of bootlegger “Legs” Diamond). Not only are Columbia and Penn revealed as collaborators, but also University of Michigan, University of Illinois, and some unnamed others.

The 1926–27 President’s Report noted that:

The plan of citation which had been agreed upon with the Yale Law Journal and the Columbia Law Review went into effect this fall. At first the forms seemed a strange and hybrid lot but in general they now appear to be entirely satisfactory. Some ambiguities in the system were eliminated and a few rather important changes made as the result of a meeting held with the editors of the Yale, Columbia and Pennsylvania⁵⁶ law reviews in December.⁵⁷

The *Harvard Law Review* President writing the 1926–27 report was Henry J. Friendly.

Henry Friendly, who received the highest grades at Harvard Law School since Louis D. Brandeis fifty years earlier, went on to co-found the Cleary Gottlieb firm in New York and to serve as a judge on the United States Court of Appeals for the Second Circuit.⁵⁸ Richard Posner has described him as “the greatest federal appellate judge of his time . . . perhaps of any time.”⁵⁹ Posner has also maintained that “[t]he *Bluebook* is gen-

56. It appears that *University of Pennsylvania Law Review* did not join the *Bluebook* consortium until after the publication of the first edition. This is confirmed by a statement in the 1927 edition of Harvard’s *Instructions for Editorial Work*: “In 1926 the HARVARD LAW REVIEW, the COLUMBIA LAW REVIEW, and the YALE LAW JOURNAL adopted a uniform system of citation. Since that time several other law reviews and legal publications have acceded to the plan.” HARVARD LAW REVIEW, INSTRUCTIONS FOR EDITORIAL WORK 13 (1927).

57. HENRY J. FRIENDLY, HARVARD LAW REVIEW ASS’N, PRESIDENT’S REPORT 15 (June 8, 1927) (Records of the Harvard Law Review Ass’n, Harvard Univ. Archives, HUD 3511.6772). This was the last of the series of President’s Reports from the 1920s devoting significant space to the topic of uniform citations. The report for 1927–28, written by Erwin N. Griswold, had virtually nothing to say (a single incidental mention) about uniform citations. ERWIN N. GRISWOLD, HARVARD LAW REVIEW ASS’N, PRESIDENT’S REPORT (May 31, 1928) (Records of the Harvard Law Review Ass’n, Harvard Univ. Archives, HUD 3511.6772).

58. Newman, *supra* note 4, at 208.

59. Richard A. Posner, In Memoriam, *Henry J. Friendly*, 99 HARV. L. REV. 1709, 1724 (1986).

erally believed to have been created by Henry Friendly . . . in 1926,”⁶⁰ but then stated in a footnote that it is uncertain whether Friendly or Griswold was the progenitor.⁶¹ Friendly himself referred in a 1981 oral history tape to “Attorney General [Herbert] Brownell, whom I had known ever since law school—he was Editor-in-Chief of the Yale Law Journal the year I was at the Harvard Law Review and he and I and two others were the authors of the first edition of the Bluebook.”⁶²

The events and chronology outlined in the *Harvard Law Review* reports are in themselves possibly consistent with Erwin Griswold having the first edition of the *Uniform System of Citation / Bluebook* printed up in summer 1926, between his first and second years of law school. They are, however, inconsistent with the idea that Griswold was the sole creator of that citation manual or adapted it from a *Harvard Law Review* precursor manual.

Where did the first edition of the *Bluebook* derive its rules? According to Griswold, the source was *Harvard Law Review’s Instructions for Editorial Work* (1922). However, a word-by-word comparison between the first-edition *Bluebook* and the *Instructions for Editorial Work* reveals exactly one sentence in common between the two texts. The Harvard instructions include “For a square holding, cite only the page on which the case begins.”⁶³ *Bluebook* edition 1 includes “[f]or a square holding, cite the case only at the page where it begins.”⁶⁴ That is the extent of their matching.

60. RICHARD A. POSNER, REFLECTIONS ON JUDGING 100 (2013).

61. *Id.* at 100 n.95.

62. DAVID M. DORSEN, HENRY FRIENDLY: GREATEST JUDGE OF HIS ERA 71 (2012). Philip W. Amram published a letter in 1978 stating:

Arthur John Keeffe’s witty comment on *A Uniform System of Citation* brought back pleasant and nostalgic memories of the winter of 1926–1927. . . . In a series of meetings at Columbia Law School, the first edition of this now famous document was prepared by Henry J. Friendly, then editor-in-chief of the *Harvard Law Review*, Herbert Brownell, then editor-in-chief of the *Yale Law Journal*, Francis Xavier Downey, then editor-in-chief of the *Columbia Law Review*, and myself, then editor-in-chief of the *University of Pennsylvania Law Review*. . . . [I]t is especially gratifying to have been, in the words of Dean Acheson, “present at the creation.”

Philip W. Amram, *Stylistic Maneuvers*, A.B.A. J., May 1978, at 652. Friendly may have had Downey and Amram in mind as the two other “authors.”

63. HARVARD LAW REVIEW, INSTRUCTIONS FOR EDITORIAL WORK 11 (1922).

64. A UNIFORM SYSTEM OF CITATION, *supra* note 15.

On the other hand, *Bluebook* 1 (1926) has approximately thirty sentences in common with *Yale Law Journal's Abbreviations and Form of Citation* (1921), as well as many of the sample citations, all of the proofreading signs, and virtually all of the items in the list of abbreviations. They both begin with the same sentence: "This pamphlet does not pretend to include a complete list of abbreviations or all the necessary data as to form."⁶⁵ The subtitle of the *Bluebook* is "Abbreviations and Form of Citation." The *Jones v. Smith* Connecticut citation that is the basic case citation example used by the Yale precursors back to Llewellyn-Field is the basic case example used in *Bluebook* 1. The Haines *Yale Law Journal* citation that is the basic periodical citation example used by the Yale precursors back to Llewellyn-Field is the basic periodical example used in *Bluebook* 1. Most of the section on treatises is identical between 1921 and 1926.

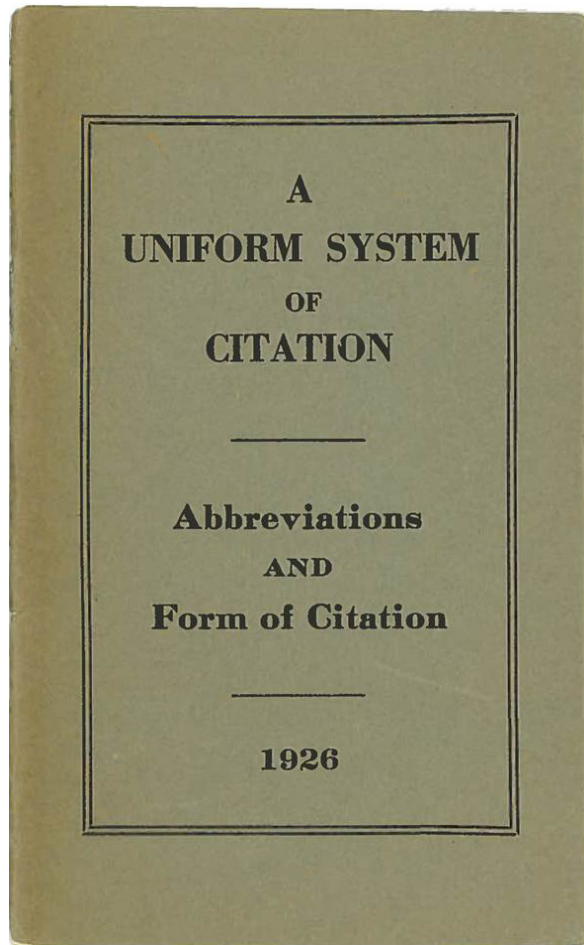
The blue color of the *Yale Law Journal* precursors of *A Uniform System of Citation* cannot be said to have inspired the color of the cover of the latter's first edition. There are actually only two known surviving copies of the latter's first edition in libraries, at Harvard Law School Library and American University's Pence Law Library,⁶⁶ and both of those libraries report that the cover color is greenish.⁶⁷ However, the early *Uniform*

65. A UNIFORM SYSTEM OF CITATION, *supra* note 15; YALE LAW JOURNAL, *supra* note 47, at 1. The 1921 pamphlet has one trivial difference in wording ("include either a complete list" instead of "include a complete list").

66. There may well be one or more copies of the first edition of *A Uniform System of Citation* at the *Harvard Law Review's* offices at Gannett House. Around 1998 William S. Hein & Co. distributed facsimile copies of the first edition, difficult to distinguish from the originals, and some libraries have erroneously dated their facsimiles 1926. Harvard Law School Library also has in its manuscript collection a unique sixteen-page typescript of *A Proposed Uniform System of Citation*. This is dated by them "1925?" (based on the latest material cited) and appears to be a draft of the first edition, differing from the published version only slightly.

67. Harvard's copy is "a dark greenish-grey. It's possible that it was a forest green original, but has faded over time." E-mail from Margaret Peachy, Curator of Digital Collections, Harvard Law Sch. Library, to Fred R. Shapiro, Assoc. Librarian for Collections & Access and Lecturer in Legal Research, Yale Law Sch. (Mar. 18, 2015, 11:59 EST) (on file with authors). American University's copy is "a muddy green color." E-mail from Susan Lewis, Assoc. Librarian for Pub. Sers., Pence Law Library, to Fred R. Shapiro, Assoc. Librarian for Collections & Access and Lecturer in Legal Research, Yale Law Sch. (Apr. 1, 2015, 10:16 EST) (on file with authors). The *Uniform System of Citation* was brown from the second (1928) edition through the fifth (1936) edition. It was only with the sixth (1939) edition that it became blue. The abandonment of brown is often attributed to the association of that color with Nazi Germany in

System of Citation editions clearly mimic the size and the design and layout of the cover of the 1921 and 1924 *Yale Law Journal* pamphlets. The binding of the unique copies of those Yale pamphlets has “A uniform system of citation” written on them in pencil, implying that Yale’s Lillian Goldman Law Library may have regarded them as versions of the *Bluebook*.



The new material that was added to the *Yale Law Journal* precursors to create the first edition of the *Bluebook* did not, except for the one sentence already mentioned, come from the Harvard *Instructions for Editorial Work*, and it was not partic-

the 1930s, but that idea appears to trace to a joke by Alan Strasser. Alan Strasser, Book Note, *Technical Due Process*: ?, 12 HARV. C.R.-C.L. L. REV. 507, 508 (1977).

ularly crucial content. There was a table of English reports added, a table of American statutes, some rules on governmental publications, a section on capitalization, a section on italicization, and some other general rules.

We will discuss in the Conclusions section at the end of this Article the question of what Erwin Griswold's role, and *Harvard Law Review's* role, might in reality have been or not been, and the question of how significant Griswold's later errors and omissions about the *Bluebook's* genesis were. First, though, we will examine in the next Section his most extreme error, which makes for a fascinating story in its own right.

A CHAPTER FROM THE LATER HISTORY OF THE *BLUEBOOK*: "THE REVOLT OF THE JUNIOR PARTNERS"

The *Bluebook* is more than a despotic set of rules that shapes legal writing and the institution of law reviews. It is also a huge moneymaker. In 1984 an article on the *Harvard Law Review* in the *Harvard Crimson* newspaper stated that: "The Review also publishes *A Uniform System of Citation*, the standard legal form book. More than 75,000 copies of the book are sold annually, bringing in half of the non profit corporation's \$600,000 gross revenues."⁶⁸ Given monetary inflation and growth in the number of law students, the number of law reviews, and the size of the legal profession generally, it is likely that *Bluebook* revenues are now in the millions of dollars.

The financial aspect of *Bluebook* publishing was not always so grandiose; indeed, in the beginning it was insignificant. The Treasurer's Reports in the Harvard Law Review Association records showed the following figures for sales of the *Uniform System of Citation*:

1930-31	\$36.53
1931-32	\$11.00
1932-33	\$28.70
1933-34	\$13.05
1934-35	\$151.25

68. David S. Hilzenrath, *Hallowed Be Its Name: An Inside Look at Harvard's Powerful and Prestigious Law Review*, HARV. CRIMSON (Mar. 14, 1984) <http://thecrimson.com/article/1984/3/14/hallowed-be-its-name-palthrough-debate>. A slightly later data point was provided by John Pottow, Treasurer of the *Harvard Law Review*: "During the life of an edition, almost a half million copies of the citation manual are sold, primarily to law students, he adds." Hope Viner Samborn, *What's New in Blue: Citation Guidelines Change Along with the Times*, A.B.A. J., Dec. 1996, at 16.

1935–36 \$84.25
 1936–37 \$208.39⁶⁹

The early history of copyright in the *Bluebook* is murky. The first three editions had no copyright notice and did not indicate anywhere which school or schools produced them. Some commentators have even thought that the early *Bluebook* was solely an in-house manual for use at Harvard alone. That idea is contradicted by the evolution of discussions with Yale, Columbia, Penn, and other schools, described above, and by additional evidence. For example, in November 1926, very soon after the *Bluebook's* initial printing, the *Virginia Law Review* announced, “This volume [of their law review] marks the institution of ‘A Uniform System of Citation’ which has been compiled and adopted by the leading Reviews of the country.”⁷⁰ By 1933 at least twenty-one law reviews had adopted the *Bluebook*.⁷¹

The fourth (1934) *Bluebook* edition had a notice on the inside front cover reading “*Copyright, 1934*” and below that listing *Columbia Law Review*, *Harvard Law Review*, *University of Pennsylvania Law Review*, and *Yale Law Journal*. Similar copyright notices were repeated in all editions that followed.

The four-way joint ownership of copyright was not, however, reflected in the finances of *Bluebook* publishing. For exactly half a century, 100% of the revenues went to the *Harvard Law Review*. This reality, and its ending, were described in a footnote to a 1976 *Yale Law Journal* book review of edition twelve of *A Uniform System of Citation*:

The matter of subsidy has occasioned spirited interchange among Twelve’s creators—the editors of the *Harvard*, *Columbia*, and *Pennsylvania Law Reviews* and the *Yale Law Journal*. The latter three felt that Harvard was illegally keeping all profits from the first eleven editions, estimated to total \$20,000 per year. See Crock, *Blue Book Turns Crimson Green*, Colum. L. Sch. News, Oct. 28, 1974, at 1, col. 1. However, the discontented trio had lost the correspondence indicating an agreement to split the profits. Their threats to sue brought a peaceful settlement, in the form of a contract which provides Harvard with only twice the profits of each of the other schools in return for continued production and distribution services. See Agreement Between the Columbia, Harvard, and University of Pennsylvania Law

69. HARVARD LAW REVIEW ASS’N, TREASURER’S REPORTS (Records of the Harvard Law Review Ass’n, Harvard Univ. Archives, HUD 3511.6788).

70. Foreword, 13 VA. L. REV. 37, 37 (1926).

71. Meeting of the Association of American Law Schools—1933, 7 AM. L. SCH. REV. 1076, 1105 (1934).

Reviews and the Yale Law Journal (Mar. 24, 1976) (on file (it is to be hoped) with the respective periodicals).⁷²

The citation here to a Columbia Law School newspaper article in 1974 is illuminating. That article began as follows:

Conflicts among Ivy League schools usually are confined to battles on the football field or basketball court, but one dispute, involving the law schools at Columbia, Harvard, Penn and Yale, may be fought out, appropriately enough, in court.

The four schools are joint owners of the copyright of the "blue book" . . . which explains how to cite cases correctly. Harvard, however, has been keeping all the money from their sales. No precise figures are available on how much is involved.

Sam Estreicher, editor-in-chief of the Columbia Law Review, said if there was an equal responsibility in the editing and compiling of the books and there is no contract giving Harvard the right to all the proceeds from the copyright, he will contact Yale, Penn, and Harvard to discuss the matter, with an eye toward possible litigation.

Howard Lesnick, editor-in-chief of the review in 1958 when a major revision of the blue book was undertaken said he had no recollection of any agreement giving Harvard all the money. "I would be surprised if my memory were wrong," he added.

The book became the white book in 1967 when it was revised again. The managing editor of the review that year, Stuart Offer, now a California attorney, said he was "sure" there was no agreement about the proceeds. "We did a hell of a lot of work and we were not working on the assumption that all the money was going to Harvard," he said.⁷³

Further into the article, there is more discussion of financial arrangements:

Harvard claims there is an agreement under which Harvard sells the three other schools the books at cost. But Ladd Leavens, treasurer of the Harvard Law Review, said his staff had been unable to find the contract.

He said it was Harvard's understanding that it did all of the work on revisions and was entitled to all the money. When asked what his position would be if other schools had contributed to the book, he said, "I'm not going to speculate on that."⁷⁴

After describing the contrast between the "in the black" *Harvard Law Review* and the struggling three other law reviews, the Columbia article went on:

Harvard also may be in the black because it has double the number of subscribers of the second most popular law review (10,000 to Yale's

72. W. Duane Benton, *Developments in the Law—Legal Citation*, 86 YALE L.J. 197, 202 n.30 (1976) (book review).

73. Stan Crock, *Blue Book Turns Crimson Green*, COLUM. L. SCH. NEWS, Oct. 28, 1974, at 1.

74. *Id.* at 1, 3.

5,000), according to Joan Wexler, articles editor of the Yale Law Journal last year, and a clerk for a Federal judge.

Harvard thought keeping the money “was a big joke,” she said. “We never served them with process, but we’d like to.”

Randall Kau of Sullivan and Cromwell, editor-in-chief of the [Yale] journal last year, said his staff did some preliminary work on the matter. Officers of the journal in 1958 and 1967 told him all four journals worked on revisions.

Kau also said he looked for an agreement that gave Harvard the sole right to the royalties, but the search was a “dry hole.” Columbia also has been unable to find a copy of such an agreement.

Kau would not rule out the possibility that there is an agreement giving Harvard the right to do what it has been doing and that the only reason for the joint copyright was to boost sales by showing the book had the “stamp of approval of leading law schools.”

Although there appeared to be a prima facie case in equity or for an accounting, Kau said, he thought a suit would be an “uphill battle” because of a lack of evidence.

Canellos [editor-in-chief of Columbia Law Review in 1967], a lawyer with Cravath, Swaine & Moore, disagreed, saying the three schools presumptively are entitled to the royalties. “It’s up to Harvard to prove there was a contract,” he said.⁷⁵

It is our privilege to be able to present more details about this “revolt of the junior partners” in the *Bluebook* consortium, from the original ringleader herself. Joan G. Wexler graduated Yale Law School in 1974, and was one of the three Article Editors of the *Yale Law Journal*. After practicing law and teaching at New York University School of Law, she taught at Brooklyn Law School. From 1994 to 2010 she was Dean of that school, and from 1994 to 2013 was its President.⁷⁶ Below is President Wexler’s account of the revolt:

In 1973, following my second year of law school, I spent half of the summer at Howard, Prim, Rice, Nemerovski, Canady and Pollak in San Francisco. It was a boutique firm and the summer associate group was quite small. As best as I can recall, there were only five of us. The other four were all or had been on the *Harvard Law Review*. One, David Engel, had been its President. I was the sole representative from the *Yale Law Journal* on which I was an Article Editor. One day at lunch, the group was discussing the finances of our respective student journals. The Harvard guys (and they all were) found great pleasure in telling me about the riches of the *Harvard Law Review*. How could this be? I knew that we were currently “in the red” and that the law school was helping with our expenses.

Perhaps because of its larger alumni base, subscriptions would be greater than those of our journal. But still, they were talking about

75. *Id.* at 3.

76. *Faculty Directory*, BROOKLYN LAW SCH., <https://brooklaw.edu/faculty/directory/emeriti?letter=v-x> (last visited Mar. 7, 2016).

an endowment! Finally, it came to light that Harvard got lots of money from the sales of the *Blue Book*. Every law student in the United States and every lawyer had to have the *Blue Book*, the standard legal citation guide for law reviews and federal courts. What a cash cow – each year, a new group of first-year law students purchased its very own copies. And just by producing a new edition, the group of purchasers could, once again, be every lawyer in the country.

I went back to my office at the firm and took out my *Blue Book*. Interestingly, the copyright was held not just by the *Harvard Law Review*, but by three other schools' reviews as well – those at Columbia, the University of Pennsylvania, and Yale. Although I knew very little about copyright law, it did not seem quite right that all the sales proceeds were going to only one school. I called Randy Kau who was the Editor-in-Chief of the *Yale Law Journal*. After a few calls to the other officers on the *Journal* (in those days there were only twelve of us), we decided that we would do nothing until we returned to New Haven, which was, at that point, only a few weeks away.

Once at school, our first order of business was figuring out what to do about this. Several of us researched what it meant to “hold” the copyright. We contacted the United States Copyright Office to make sure we still held the copyright. It is possible, although I am not certain, that someone went on a field trip to Washington, to get information. Then, two of us went to see Professor Ralph S. Brown who was then teaching Copyright Law. His advice was succinct – sue them!

We, of course, did not have the slightest idea how to do that. For the next month, at our weekly meetings, we took care of the business items of the journal, where were we with articles and notes, and then got down to the heart of what we really wanted to talk about – our lawsuit. Eventually, we drafted a complaint, and realizing that there were two other parties that needed to be plaintiffs, Randy called the Editors-in-Chiefs of the *Columbia Law Review* and the *University of Pennsylvania Law Review*. The next issue, on which we spent an inordinate amount of time, all of it quite entertaining, was how and where to serve the *Harvard Law Review*.

Knowing that the *Review* would never turn down a “fun” competition with us, we decided to invite them to a touch-football game in New Haven. This became the subject of more meeting time. What would be our rules? When exactly should there be service of process? Would we have to serve food and drinks? Who would be the referee? We decided that each team could have one ringer, someone who was not a member of its publication. One of our classmates, Clarence Thomas, played intramural football at Yale, and he looked pretty good to us. We decided that we would ask him to be our ringer.

Although I remember our plans quite well, I am not sure whether the football game ever happened. Recently, I spoke with Randy Kau, and he, too, was a bit fuzzy on what had actually happened. We both, however, clearly recalled that eventually the matter settled. Under the terms of the settlement, I believe each school's journal received some amount and we made a decision about the financial arrangement of the *Blue Book* going forward. A new edition was to be created

and, thereafter, each journal would receive a share of the profits with Harvard getting a larger share because it would do more of the production work.⁷⁷

The settlement referred to by Joan Wexler was not reached immediately. M. Duncan Grant, University of Pennsylvania Law School class of '75 and today a partner in the Pepper Hamilton law firm, contacted President Wexler after a preprint version of this Article appeared online and supplied additional information about a further push that was necessary to budge *Harvard Law Review*. Mr. Grant wrote:

I was editor-in-chief of the 1974-1975 volume of the University of Pennsylvania Law Review. Our Dean, Bernard Wolfman, had been pressing me to increase law review revenues, so that the School would not need to provide the Law Review with such a large subsidy each year. I struggled to figure out how we could enhance our circulation; how does a 24-year-old law student contact potential subscribers and persuade them to join our small community of readers, especially when there probably weren't many law libraries that didn't already subscribe?

Probably because I lived with the 11th edition of the Bluebook during my year as editor-in-chief, I noticed that its copyright was held by four law reviews. I inquired and learned that we weren't receiving any royalties. I knew nothing about copyright law, so I spoke briefly with Professor Bob Gorman, who informed me that the allocation of royalties may be determined by contract. I then reached out to the editors-in-chief at Columbia and Yale, Samuel Estreicher and David Martin . . . and they confirmed that they also were not receiving any Bluebook royalties. I distinctly remember drafting a letter that they and I all signed, addressed to Harvard Law Review president Daniel Meltzer, requesting that Harvard share the royalties with Columbia, Penn, and Yale. The response was to the effect that Harvard did all of the work, so it was entitled to all of the royalties. We pushed back, and the ultimate result was that within a year or two, royalties were being shared by all four journals, in the ratio described in the Adam Liptak piece.⁷⁸

77. E-mail from Joan G. Wexler, Dean & President Emerita, Brooklyn Law Sch., to Fred R. Shapiro, Assoc. Librarian for Collections & Access and Lecturer in Legal Research, Yale Law Sch. (Sept. 15, 2015, 16:40 EST) (on file with authors). Some corroboration of the lack of royalties going beyond Cambridge is provided by accountants' opinions and financial statements for the *Yale Law Journal*. None of these documents for the years 1954–63 mentioned any income from the *Uniform System of Citation*. YALE LAW SCHOOL RECORDS OF THE DEAN, Box 42, 2001-A-040, Yale University Archives.

78. E-mail from M. Duncan Grant, Partner, Pepper Hamilton LLP, to Joan G. Wexler, Dean & President Emerita, Brooklyn Law Sch. (Dec. 9, 2015, 15:04 EST) (on file with authors). The "Adam Liptak piece" referred to is Adam Liptak, *Yale Finds Error in Legal Stylebook: Contrary to Claim, Harvard Didn't Create It*, N.Y. TIMES, Dec. 8, 2015, at A24, which referred to a 40% (Harvard)–20%–20%–20% split of profits. Mr. Grant's account matches that found in authoritative materials in the Albert Sacks Papers at Harvard Law

The renegotiation of the four-school *Bluebook* relationship dragged on even longer than indicated by Mr. Grant. Another response to the preprint version of this Article came from Edward R. Muller, Yale Law School class of '76 (currently Vice Chairman of NRG Energy, Inc.):

I was the Managing Editor of Volume 85. When I was elected in 1975, my immediate predecessor, Duane Benton, now on the 8th Circuit, handed me a box of papers and said they involved a claim that the Yale Law Journal might be entitled to a share of the profits from the *Blue Book*. I put it aside until I learned that the Law Journal only could afford to put out seven of its eight issues and that I was to ask the Dean for the money for the eighth issue. That prompted me to take a look inside the box. After studying the papers, I concluded that the Law Journal indeed had a claim to the profits.

Thereupon, I got in contact with folks at the Harvard Law Review and asserted our claim. Fairly promptly, we negotiated an agreement whereby Yale, Penn and Columbia would waive claims to past profits, Harvard would receive 40% of the profits going forward, and the three others would each receive 20% of the profits. The split was agreed for the reasons you state in your article. We also agreed that the next revision would be done by Harvard and Yale and the subsequent one done by Penn and Columbia. I personally worked on the revision done in 1975 - 76.⁷⁹

The Yale/Columbia/Penn revolt of the 1970s is a logical place to finish our historical trajectory. There is one later tidbit of real interest, however. To the many prominent names who have been players in this drama—Erwin Griswold, Karl Llewellyn, Felix Frankfurter, Henry Friendly, Clarence Thomas, and others—may be added Barack Obama, who before becoming President of the United States was President of the *Harvard Law Review* in 1990–1991.⁸⁰ As *Harvard Law Review* President that year he was significantly involved in the negotiations preceding the 1991 revision of the *Bluebook*.⁸¹

The 15th *Bluebook* edition that was published in 1991 was, editorially, a milestone, making many significant changes in rules and their presentation.⁸² It is not clear what role Barack

School Library, which we are not able to quote because of permission issues.

79. E-mail from Edward R. Muller, Vice Chairman of the Board, NRG Energy, Inc., to Fred R. Shapiro, Assoc. Librarian for Collections & Access and Lecturer in Legal Research, Yale Law Sch., and Julie Graves Krishnaswami, Head of Instruction & Lecturer in Legal Research, Yale Law Sch. (Dec. 8, 2015, 00:27 EST) (on file with authors).

80. Fox Butterfield, *First Black Elected To Head Harvard's Law Review*, N.Y. TIMES (Feb. 6, 1990), <http://nytimes.com/1990/02/06/us/first-black-elected-to-head-harvard-s-law-review.html>.

81. See *infra* note 83 and accompanying text.

82. One such innovation was to require the first names of authors in cita-

Obama may have played in editorial work on the *Bluebook*, but several sources indicate that he played an important part in working out the financial and organizational terms for the four schools' collaboration on the new edition. For example, Alex M. Azar II, a member of the five-person Executive Committee of the *Yale Law Journal* in 1990–1991 (and subsequently Deputy Secretary of the United States Department of Health and Human Services) recalls:

When I was one of the five members of the Executive Committee of the *Yale Law Journal*, Volume 100 (1990-1991), I worked directly with Barack Obama, who was then President of the *Harvard Law Review*. The subject of our interactions was the renegotiation of the contractual partnership among the *Harvard Law Review*, the *Yale Law Journal*, the *University of Pennsylvania Law Review*, and the *Columbia Law Review*, which own *The Bluebook: A Uniform Manual of Citation*, as well as the subsequent allocation of roles and responsibilities among the four law journals/reviews for the editing and production of the next edition of *The Bluebook*. I partnered with another member of the Executive Committee of the *Yale Law Journal* in these negotiations. I recall at least one direct telephone call with then-Mr. Obama as part of these negotiations. In addition, we had a meeting of leaders from each of the four law journals/reviews in New York City hosted by Columbia's law review, at which we negotiated during a full-day meeting the updated contractual partnership for *The Bluebook* and laid out roles and responsibilities for the editing and production of the next edition of *The Bluebook*. Mr. Obama personally led the delegation from Harvard, which I believe also included the managing editor from Harvard. In addition to another Yale Executive Committee Member and me, there were senior representatives from Columbia and Penn. The negotiations were collegial, productive, and successful. Once we moved into actual editing of the next edition of *The Bluebook*, Yale's participation was led by Executive Committee Member Jacqueline Charlesworth. I recall that her counterpart from Harvard was Kenneth Mack. Both of their names, as is the custom, appear in case names in that edition of *The Bluebook*.⁸³

Returning to the main thread of this Article, our focus is not on the justice or injustice of *Harvard Law Review's* long monopolization of the proceeds of publishing *A Uniform System*

tions to books and articles ("Jane Smith" instead of just "Smith" or "J. Smith," which had been the previous formats). This might seem to be a minor technical adjustment but was in fact a response to the feminist scholars Katharine T. Bartlett, Carolyn Heilbrun, and Judith Resnik, who had argued that full names reveal gender, as well as humanizing and particularizing authors. Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 829 n.* (1990); Carolyn Heilbrun & Judith Resnik, *Convergences: Law, Literature, and Feminism*, 99 YALE L.J. 1913, 1913 n.** (1990).

83. E-mail from Alex M. Azar, II, to Fred R. Shapiro, Assoc. Librarian for Collections & Access and Lecturer in Legal Research, Yale Law Sch. (Oct. 23, 2015, 22:34 EST) (on file with authors).

of *Citation*, to the exclusion of its fellow copyright holders and, to some extent, fellow compilers. Our focus rather is on the remarkable way in which Erwin Griswold described the *Bluebook's* distribution of revenues.

In his centennial history, Griswold stated that in the 1920s there was

a meeting of the Presidents of the *Harvard*, *Columbia*, and *University of Pennsylvania Law Reviews*, and the *Yale Law Journal*. As a result of this meeting, the four journals now publish the *Bluebook* jointly and share the revenues; but virtually all the editorial work is still done at Harvard, which earns the largest share of the income.⁸⁴

The words “as a result of this meeting” and “share the revenues,” taken together, mean that Griswold was saying that the revenue-sharing occurred *as a result of* a meeting in the 1920s. Since the revenue-sharing actually commenced in the 1970s, Griswold was erasing a half-century of *Bluebook* financial history. The revolt and renegotiation were in 1987 recent history, of which Griswold, as an exceptionally involved alumnus of the *Harvard Law Review*, would have been well aware.⁸⁵ Was he avoiding an embarrassing record of domination by blending together the events of two widely separated eras?

CONCLUSIONS

We have seen that the *Bluebook* is widely thought to have originated at Harvard, founded on an internal manual of the *Harvard Law Review*, and Erwin Griswold is widely thought to have been the person who created the *Bluebook* or expanded it from the *Harvard Law Review* internal manual. These popular ideas are clearly erroneous, and Griswold appears to be responsible for spreading them through his 1987 speech and his 1992 interview. In 1987 he also radically misstated the distribution of moneys from the first half-century of *Bluebook* sales.

The most obvious explanation for Erwin Griswold's inaccuracies concerning the origins of the *Bluebook* and the division of royalties is that he was remembering events of sixty or more years before and it would be understandable for him to confuse the details. There is much evidence, however, cutting against such an explanation. Griswold was, by all indications, quite

84. HARVARD LAW REVIEW: CENTENNIAL ALBUM, *supra* note 3, at 12.

85. In fact, there is correspondence in the Griswold Papers that makes it clear that Griswold was being informed in 1975 about the Harvard response to the revolt of the three other schools concerning *Bluebook* revenues, and that he was being consulted for advice on that response. ERWIN N. GRISWOLD PAPERS, HARVARD LAW SCHOOL LIBRARY, Box 228, Folder 228-10.

sharp into his late eighties. He was a partner in the firm of Jones, Day, Reavis & Pogue, “remaining active until recently,” according to his obituary in the *Washington Post* in November 1994.⁸⁶ In 1993 he was lead attorney for the Center to Prevent Handgun Violence in an Ohio Supreme Court case.⁸⁷ Griswold, who at the time of his death had argued more cases before the United States Supreme Court than any other modern advocate besides John W. Davis,⁸⁸ argued a case there as late as March 1987, the month before his centennial piece containing the extensive errors about *Bluebook* history.⁸⁹ He published four law review articles in 1987, and eight more items after that year, and his archived letters as late as June 1994 were perfectly articulate.

One of the authors of the present Article asked James Paulsen about his impressions of Erwin Griswold’s alertness at the time (1992) when Paulsen interviewed him concerning authorship of the *Bluebook*. Paulsen responded, “[i]t was the only time I ever met Dean Griswold in person and I’m therefore not the best judge of his lucidity, at least compared with his norm. However, he seemed a whole lot more lucid than most lawyers/professors half his age.”⁹⁰

The strongest argument against Griswold’s errors being attributable to misremembering is that he was not indeed exclusively relying on memory. In the Erwin N. Griswold Papers at Harvard Law School Library, there are two folders labelled “Background Materials for ‘History’ of Harvard Law Review.”⁹¹ These contain extensive materials that Griswold consulted in preparing his 1987 centennial banquet article. In other words, he conducted substantial research for that address. Included in one of the folders is a photocopy of the *Instructions for Editorial*

86. Martin Weil, *Erwin Griswold, U.S. Solicitor General, Dies*, WASH. POST, Nov. 20, 1994, at B5.

87. See *Arnold v. Cleveland*, 616 N.E.2d 163, 166 (Ohio 1993) (“Erwin N. Griswold . . . urging affirmance for amici curiae . . . Center to Prevent Handgun Violence Legal Action Project.”).

88. Weil, *supra* note 86.

89. *Rockford Life Ins. Co. v. Ill. Dep’t of Revenue*, 482 U.S. 182, 182 (1987).

90. E-mail from James W. Paulsen, Professor of Law, S. Tex. Coll. of Law, to Fred R. Shapiro, Assoc. Librarian for Collections & Access and Lecturer in Legal Research, Yale Law Sch. (Aug. 10, 2015, 13:46 EST) (on file with authors).

91. ERWIN N. GRISWOLD PAPERS, *supra* note 85, at Box 229, Folders 229-1 and 229-2.

Work document from the *Harvard Law Review* in 1922.⁹² This implies that Griswold freshly consulted the *Instructions for Editorial Work* in 1987 and decided that it was the basis of the first edition of the *Bluebook*, despite the fact that it provided only a single sentence for that first edition. Taking into account also that the subject matter of his presidency of the *Law Review* was one that was important to him, we must look elsewhere than failure of memory for an explanation of his inaccuracies.

We have seen that *Instructions for Editorial Work* has very little in common with the *Bluebook*, and that the path to the *Bluebook's* creation, as shown by comparison to precursor documents and by the detailed accounts in *Harvard Law Review* president's reports, clearly ran through Yale. Erwin Griswold seems to have waited until 1987 before asserting that Harvard developed its internal manual into the *Uniform System of Citation*, and waited until 1992 before suggesting that he himself expanded the *Instructions for Editorial Work* into the *Bluebook* first edition. In 1934, there was discussion at the Association of American Law Schools annual meeting of a report by a Special Committee on Form and Style of Law Reviews, proposing an alternative system of citation form for law review use.⁹³ Erwin Griswold spoke at length defending Harvard and Yale against charges of not cooperating with the Special Committee, but he did not suggest in any way that he had had a special role in developing the *Uniform System of Citation* rules merely eight years before.⁹⁴

It is hard to fathom when in 1925 or 1926 Griswold would have had time to develop the *Bluebook*. According to his autobiography, in the summer of 1926 after completing his exams for the first year of Harvard Law School, he left the same day to travel to Europe and "fairly well forgot about the law and the Law School."⁹⁵ During that first year (1925–1926), he had been a straight-A student: "I thought that my role for the time being was to work, and I tried to do so. I did not miss classes, and I was prepared for each class."⁹⁶ In April his activities had been

92. *Id.* at Box 229, Folder 229-2.

93. *Meeting of the Association of American Law Schools—1934*, 8 AM. L. SCH. REV. 180, 213–17 (1935).

94. *Id.* at 213–14.

95. ERWIN N. GRISWOLD, *OULD FIELDS, NEW CORNE: THE PERSONAL MEMOIRS OF A TWENTIETH CENTURY LAWYER* 65 (1992).

96. *Id.* at 63.

limited for four weeks by an eye injury.⁹⁷ It is possible that Griswold could have been enlisted by the *Harvard Law Review* at some time during the first year to beef up the *Yale Law Journal's Abbreviations and Form of Citation* pamphlet to create the *Uniform System of Citation*, or to deliver the latter to a print shop in Cleveland while home on vacation. But he was not yet a member of the *Harvard Law Review*.⁹⁸ Additionally, he later wrote that “David Cavers . . . was, that year, president of the *Harvard Law Review*, and thus only dimly seen by a first-year student.”⁹⁹ That does not sound like what would be said by someone who had been commissioned by the *Law Review* to execute an important assignment.

Yet, despite all the evidence against origination by Harvard or Erwin Griswold, the former Dean did insist on precisely those claims in his influential statements of 1987 and 1992. Paulsen recalls that at the 1992 *Harvard Law Review* annual banquet Griswold “did effectively take sole credit for the final product.”¹⁰⁰ Paulsen also mentions that Griswold “actually pulled a copy of his mimeographed ‘first edition’ out of his suit coat pocket during his presentation [at the 1992 annual banquet] and waved it around while making a few caustic comments about the amount of unnecessary expansion it had seen over the decades.”¹⁰¹ With regard to his own recollections, Paulsen (a distinguished legal historian) summarizes: “I’d just about stake my life on the accuracy of my description of what Dean Griswold said.”¹⁰²

Even if Griswold was the person or one of the people who moderately expanded the 1921 and 1924 *Yale Law Journal Abbreviations and Form of Citation* pamphlets into the first edition of the *Uniform System of Citation*, and even if he did get the *Bluebook* printed up by a shop in Cleveland in 1926, we are still left with a number of very salient facts. We have seen that

97. *Id.* at 64.

98. The framed document announcing Griswold’s election to the *Harvard Law Review* was dated Sept. 25, 1926. ERIKA S. CHADBOURN, ERWIN NATHANIEL GRISWOLD: ILLUSTRIOUS ALUMNUS 1 (1988).

99. Erwin N. Griswold, *David F. Cavers*, 51 L. & CONTEMP. PROBS., no. 3, 1988, at i, i.

100. E-mail from James W. Paulsen, Professor of Law, S. Tex. Coll. of Law, to Fred R. Shapiro, Assoc. Librarian for Collections & Access and Lecturer in Legal Research, Yale Law Sch. (Aug. 10, 2015, 16:22 EST) (on file with authors).

101. E-mail from James W. Paulsen, *supra* note 90.

102. *Id.*

it was the Yale precursors, not the Harvard *Instructions for Editorial Work*, that laid the foundation for the *Bluebook*; that Robert G. Page (President of the *Harvard Law Review*) attested in 1925 that “a year ago the Yale Law Journal started a movement for a uniform mode of citation”; that *Harvard Law Review* initially opposed the uniform citations movement; that the editors of *Yale Law Journal* and *Columbia Law Review* had already “worked out a tentative citation plan” in 1925; and that Henry Friendly said that there were four “authors” of the first edition of the *Bluebook*. In other words, accepting the most generous interpretation of Griswold’s role still does not make him or Harvard the creator of the *Bluebook*.

Erwin Griswold had ample reason to know the facts just mentioned, both because they were important and recent events to him when he was on the *Harvard Law Review* in 1926–1928 and because he did research for his 1987 article that would have refreshed his memories, including seeing the crucial *Instructions for Editorial Work* document. Because of his later status of Dean and his status, as we shall see, of “number one fan” of the *Harvard Law Review*, he also had ample reason to understand that the *Harvard Law Review* did not share *Bluebook* income with the three other copyright holders as a result of a meeting in the 1920s as he suggested in 1987.¹⁰³ How then can we explain his misstatements of *Bluebook* history?

Professor Dan M. Kahan of Yale Law School, himself a former President of the *Harvard Law Review* (1988–1989), has written about the phenomenon of “identity-protective cognition,” a type of “motivated reasoning”:

Motivated reasoning refers to the unconscious tendency of individuals to process information in a manner that suits some end or goal extrinsic to the formation of accurate beliefs. . . .

. . . .

. . . Individuals depend on select groups—from families to university faculties, from religious denominations to political parties—for all manner of material and emotional support. Propositions that impugn the character or competence of such groups, or that contradict the groups’ shared commitments, can thus jeopardize their individual members’ well-being. Assenting to such a proposition him- or herself can sever an individual’s bonds with such a group. The prospect that people outside the group might credit this proposition can also harm an individual by reducing the social standing or the self-esteem that person enjoys by virtue of his or her group’s reputation. Individuals thus face psychic pressure to resist propositions of that sort, generat-

103. See *supra* note 85.

ing a species of motivated reasoning known as *identity-protective cognition*.¹⁰⁴

In order to preserve the well-being derived from a group identity, people will distort their beliefs about factual matters. Those who are highly reflective and deliberate can be even more adept at creating biased “group-congenial beliefs.”¹⁰⁵

Erwin Griswold was a student at Harvard Law School for four years, a faculty member there for thirty-three years, Dean for twenty-one years. His identification with the *Harvard Law Review* was, if anything, even closer. After his death, the editors referred to him as:

[T]he preeminent source of guidance and inspiration for the editors of the *Harvard Law Review* for most of the journal’s history.

....

... In the eyes of decades of *Harvard Law Review* editors, Dean Griswold came to personify this institution. The Dean, who recently noted that he personally had known all of the *Law Review*’s Presidents since Volume 13, was a constant if intangible presence in the office of this journal.

....

With the Dean’s passing, we editors of the *Harvard Law Review* have lost our most loyal alumnus, our most inspirational teacher, and our most devoted reader.¹⁰⁶

The best explanation of why Erwin Griswold promulgated such glaring errors about the history of the *Bluebook* may be that, for him, Harvard Law School and *Harvard Law Review* embodied his group identity. If the idea that an important institution like the *Uniform System of Citation* originated elsewhere contradicted his core motivations, then over time he could have come to believe that it was a product of Harvard rather than of Yale. Even with the *Instructions for Editorial Work*’s lack of similarity to the *Bluebook* staring him in the face, he might not have been able to “see” it. The *Harvard Law Review* ultimately published the *Bluebook*, and so, he may have thought, it must have always been the prime mover in the *Bluebook*’s development. As Griswold stated in the passage quoted as the epigraph to this Article, “We tend to think of everything that exists now as always having existed. We like all of the comfortable things to which we are now accustomed, and

104. Dan M. Kahan, *Foreword: Neutral Principles, Motivated Cognition, and Some Problems for Constitutional Law*, 125 HARV. L. REV. 1, 19–20 (2011).

105. *Id.* at 21.

106. In Memoriam, *Erwin Nathaniel Griswold*, 108 HARV. L. REV. 979, 979 (1995).

hate to give up anything which has worked well in earlier days under simpler conditions.¹⁰⁷

POSTSCRIPT

Some readers may question whether originating the hypercomplicated *Bluebook* should be a source of pride for Yale. Our response is that, although the *Bluebook* version that subsequently developed under the leadership of *Harvard Law Review* currently consists of 582 fairly large pages, the two earliest Yale precursors of the *Bluebook* were, respectively, one page and fifteen pages long. And these were very small pages.¹⁰⁸

107. Griswold, *supra* note 1.

108. The following chart shows the increase of size (in number of pages) of the *Bluebook* editions:

First (1926)	26
Second (1928)	38
Third (1931)	38
Fourth (1934)	48
Fifth (1936)	51
Sixth (1939)	53
Seventh (1947)	68
Eighth (1949)	87
Ninth (1955)	96
Tenth (1958)	129
Eleventh (1967)	124
Twelfth (1976)	200
Thirteenth (1981)	250
Fourteenth (1986)	268
Fifteenth (1991)	362
Sixteenth (1996)	382
Seventeenth (2000)	408
Eighteenth (2005)	431
Nineteenth (2010)	530
Twentieth (2015)	582